IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1278 OF 2003.

Sou.Aubai Sadashiv Pol. ... Petitioner.
Versus.
Keshav Pandurang Gorad
and others. ... Respondents.

Ms.Kololgi holding for Shri M.L.Patil for the Petitioner.

Shri H.G.Wakshe for the Respondent No.3.

CORAM : ABHAY S.OKA, J.

DATED : 22nd June, 2007.

P.C.:

1. Heard the learned Advocate for the Petitioner. The Petitioner is the original Plaintiff who filed a suit for partition and separate possession. The said suit was decreed on 21st March 1998. Some of the Defendants in the said suit preferred an Appeal against the decree for partition. The Appeal was filed on 6th April 2000 along with an application for condonation of delay. By the impugned order, the delay in preferring the Appeal has been condoned. The learned Advocate for the Petitioner submitted that there was a gross and unexplained delay in preferring the Appeal. She invited my attention to the death certificate of Pandurang relied upon in support of the delay condonation application. She pointed out that the said certificate shows that an entry of the death of Pandurang which had allegedly taken place on 6th May 1952 was made 47 years

thereafter. She submitted that the document was suspicious.

2. I have considered the submissions. The Appeal was sought to be preferred against the decree for general partition. The effect of the impugned order is that the delay of about two years in preferring the Appeal has been condoned. It is well settled position of law that the Appellate Court has to adopt a liberal and justice oriented approach while considering the Application under section 5 of the Limitation Act, 1963. By the impugned order, delay in preferring the Appeal has been condoned and thus substantial justice has been done. There is no perversity in the impugned order. Hence no case is made out for interference under Article 227 of the Constitution of India. Writ Petition has remained pending in this Court from the year 2003 and the Appeal has been preferred in the year 2000. Considering this aspect, the Appeal Court will make an endeavour to decide the Appeal as expeditiously as possible and preferably within a period of one year from today.

Judge.